

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

HYDRO SPRAY, INC.¹

Employer

and

TEAMSTERS UNION LOCAL 650,
affiliated with the INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

Case 18-RC-16470

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²

¹ The Employer's name appears as amended at the hearing.

² The Employer, Hydro Spray, Inc., an Iowa corporation, is engaged in the manufacture, sale and installation of car wash equipment at and out of its Roosevelt Street, Cedar Falls, Iowa facility.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks a unit, as amended at the hearing, of all production and maintenance employees, including shipping and warehouse employees, employed by the Employer at its 209 North Roosevelt Street, Cedar Falls, Iowa facility. Contrary to Petitioner, the Employer would also include installation employees. The parties also disagree on the supervisory status of Merle Ridder.³ Petitioner contends that Ridder exercises authority requiring a conclusion that he is a supervisor within the meaning of Section 2(11) of the Act. The Employer, on the other hand, maintains that Ridder should be included in the unit.

The Employer manufactures self-service car washes, including automatic ones, where the customer puts money into a machine and drives his/her car into the car wash, and “wand” ones, where the customer pulls in and washes his/her car off with a wand that sprays water and/or soap. The Employer’s operation includes a fabrication area, consisting of eight employees, where steel parts are made; an assembly area, consisting of ten employees, where the parts are assembled into a finished product; and a shipping/staging area, consisting of two employees, where the assembled product is

During the past calendar year, the Employer sold and shipped in excess of \$50,000 worth of goods and materials directly to customers located outside the State of Iowa.

³ At the hearing, the supervisory status of Steven Blasberg was also in dispute. However, in its post-hearing brief, the Employer agreed that Blasberg is a supervisor within the meaning of the Act.

prepared for shipping. Petitioner and the Employer agree on the inclusion of these 20 employees, except for Merle Ridder, who may or may not be included in the total number of assembly employees given herein.

The Employer also employs installation employees (also known as the road crew). There are seven installation employees, not including Steven Blasberg. Installation employees either transport by truck or follow the final product to the customers' locations, unload the car washes, and install them. The installation crews consist of one or two, and occasionally three, employees. The Employer's installation crews work with local tradespeople, who assist in the installation. These local tradespeople might include plumbers or electricians. The installation employees work 60 to 70 hours per week while on the road, and require overnight lodging. Generally, two car washes are installed each week. The Employer installs its product throughout the United States, although most of its business is from Michigan west to Colorado. Car washes are delivered to their destination by one of three methods—common carrier, the customer's own truck, or delivery by the Employer.

In addition to installation of the car wash, the road crew trains the customer in the operation of the car wash. This training includes washing 30 to 100 cars to check for problems. Installation employees also perform service calls, which might require a visit to the customer location, or the problem might be resolved over the telephone.

Installation employees are supervised by Inside Sales Coordinator Dale Hughson. Assisting Hughson in the direction of the installation employees is Steven Blasberg. Plant Manager Ralph Greenwood is responsible for the fabrication, assembly and shipping and receiving areas. Reporting directly to Greenwood are Ken Oatman

(research and development); Hughson; Diane Hinkle (purchasing); and Merle Ridder and James Buettner (working leaders), although Buettner has left the Employer's employ and his position is vacant. Mr. Ridder was given the job of working leader within 30 to 60 days before the hearing, to relieve Greenwood of some of his duties, as Greenwood was recently promoted from working leader to plant manager. Hughson referred to Ridder as part of the "management team" at the hearing. Hughson indicated that he (Hughson) spends most of his time in his office, and that Greenwood spends about 15 percent of his time on the production floor.

Installation employees start their work week at about 7:00 a.m. on Mondays at the Employer's facility. They get their assignments, copies of contracts and maps to their destinations, and the names of contact persons at their destinations. They review the contracts with Blasberg or Hughson. Based on a check sheet or Inventory Transfer Sheet, the installation employees restock their trucks by getting parts out of inventory. On a typical Monday, installation employees spend half the day at the Employer's facility, and then leave for the rest of the week for installation work. During the time installation employees are at the facility, they take breaks at the same times and in the same location as production or shipping and receiving employees. During their time at the plant on Monday mornings, installation employees have most of their work-related contact with the shipping and warehouse employees. For example, if they can't find parts to restock their trucks, they might seek the assistance of employee Eric Rudy. Dave Tripp, the other shipping employee, is responsible for loading the final product onto the trucks. If they have the time—whether on Monday mornings or at other times during the week while waiting for an installation assignment—installation employees

might assist Tripp in loading trucks, pulling parts, or boxing product. Hughson estimated that installation employees spend about 10 percent of their time, in addition to Monday mornings, at the Employer's facility, mostly in the shipping and receiving area. During the time they are in the shipping and receiving area, even if they are assisting Tripp, the installation employees are supervised by Hughson and Blasberg.

Installation employees use some of the same hand tools that assembly employees use, although the Employer furnishes hand tools for production employees, while installation employees must purchase their own. It appears that some fabrication employees also own their tools, although the record is unclear whether they do so out of choice or because the Employer requires it. Installation employees must read blueprints, test equipment, weld, assemble, train, coordinate work, and at least some have some plumbing and electrical expertise. According to the Employer, some assemblers must also read blueprints (some of which are the same blueprints that are used by installers), weld, assemble, and test equipment, and some have electrical and plumbing skills. It appears that the two groups of employees perform the same tasks, only at different locations. All benefits, work rules and payroll are the same for all employees. Installation employees are paid between \$9.00 and \$13.00 per hour, while production employees are paid \$7.00 to \$14.00 per hour. Production employees punch a time clock, average 40 hours per week, and may work Saturdays but not Sundays. Installation employees fill out a time sheet, recording work hours and travel hours, and can work Saturdays and Sundays.

Occasionally installers work in assembly.⁴ Also, assemblers handle some customer service calls when the installation crews are out. Usually the caller is directed to speak to the highest-ranking employee in a given area. The Employer estimates that production employees field one customer service call per week, except for one employee with plumbing expertise who handles them daily. Production employees have gone on the road to assist installers, and set up units at four to five trade shows each year.⁵ While the record is not entirely clear on this point, it appears that only production employees set up units at the trade shows, and installation employees are not involved. The Employer looks for the same skills whether hiring production employees or installers, except that installers must be willing to travel and must obtain a commercial driver's license once employed. None of the current seven installation employees previously worked in the Employer's production or maintenance areas on a full-time basis, but three of the current production employees were once assigned to the road crews.

According to Hughson, Merle Ridder spends 25 percent of his time giving directions or making assignments and 75 percent of his time assembling parts. Ridder is also responsible for coordinating with Diane Hinkle to make sure parts are available.

⁴ In its post-hearing brief, the Employer characterizes installer work in assembly as "frequent." The record does not support such a finding. While the Employer provided some examples of installers working in assembly, the frequency appears sporadic, when installers are not otherwise busy and when production is behind. Installers are not regularly scheduled to work in assembly.

⁵ Again, as with installers working production, production employees go out with road crews when the Employer is short-handed with regard to installers. Employer witness Hughson identified five named and one unnamed production employees who went out with the road crew. However, Hughson did not place these occasions in context by explaining when they occurred, except for a welder (whose name he could not recall and who is no longer employed by the Employer) who assisted a road crew two or three years ago.

Ridder is “in charge” of assembly, according to Hughson. He makes sure products are assembled correctly, and he assigns work. The record is unclear as to what type of judgment Ridder uses in assigning work. Greenwood and Ridder conduct performance reviews for production employees, although it appears Greenwood fills out the evaluation forms. The record is unclear as to Ridder’s role in the evaluation process, although it appears he sits in with Greenwood when the evaluation is reviewed with the individual employee. There is no evidence that Ridder disciplines, hires, fires, recommends wage increases, or adjusts employee grievances.

The Employer holds managerial or supervisory meetings on a weekly basis. In attendance are Hughson, Ken Oatman, Diane Nelius (payroll), Diane Hinkle, Merle Ridder, Jim Buettner (until he left), and Bill Webster (accounting). Blasberg does not attend, because Hughson advises him of the results of the meetings. At the meetings, the group reviews what production is required, what sales orders are on hand, and when jobs are scheduled to be shipped. According to Hughson, the purpose of the meeting is to get everybody’s input on the schedule to make sure it can be met.

In view of the foregoing and the record as a whole, I conclude that the Employer’s production and maintenance employees share a community of interest that is sufficiently distinct to make them an appropriate group for collective bargaining, excluding the installation employees. First, the production and maintenance employees are separately supervised by Plant Manager Greenwood, while the installation employees are supervised by Inside Sales Coordinator Dale Hughson. While Hughson reports to Greenwood, it is clear from the record that Greenwood is primarily responsible for hiring, evaluating and disciplining production and maintenance

employees, and that Hughson has the same responsibilities for the installation employees. Moreover, the record is clear that Merle Ridder assigns work to and monitors the quality of performance for production and maintenance employees, while Hughson has the same responsibilities for installation employees. Second, even the Employer acknowledges that installation employees spend about 10 percent of their time at its Cedar Falls, Iowa facility, and that they are otherwise on the road. Moreover, the Employer's evidence suggests that most of the time installation employees spend at the Employer's facility is limited to the shipping and receiving area, where they pick up new contracts, make arrangements for deliveries, restock their trucks, and assist shipping and receiving employee Dave Tripp as they have time. The record is also clear that Hughson and Blasberg direct and supervise the installation employees when they work with Tripp, rather than Tripp's supervisor doing so.

Third, installation employees have a different work schedule from production and maintenance employees. Production and maintenance employees average 40 hours per week on a Monday-through-Friday schedule, with the possibility of work on Saturdays. On the other hand, installation employees work 60 to 70 hours per week when on the road and require overnight lodging. Production and maintenance employees punch a time clock. On the other hand, installation employees keep a handwritten time sheet and differentiate hours spent on installation and hours spent traveling. As a result, one difference the Employer looks at when hiring is that applicants for installation employee positions must be willing to travel; applicants for production and maintenance employee positions need not travel. In addition, installation employees obtain a commercial driver's license once hired.

While there is evidence in the record that production employees can and will join a road crew in the event the Employer is short-handed with regard to installers, the record is unclear as to the frequency of such an event. Similarly, while there is evidence in the record that installers can and will assist in production, the record is unclear as to the frequency. In both instances, it appears to be irregular and limited to when either group is short-handed. Thus, there is no evidence of regular interchange of employees between the production area and the installation crews.

In reaching the conclusion that installation employees should not be included in the unit, I have considered uncontroverted evidence that the two groups use similar tools, perform the same functions, have the same benefits, are paid similar hourly rates, and are subject to the same work rules. While these facts are important, I note that there are some differences, including who bears the cost for tools (installation employees pay for their own tools—the Employer purchases them for production employees, except possibly in the fabrication area); the fact that installation employees incur travel expenses and must submit travel vouchers; and the fact that installation employees are regularly scheduled to work overtime. While it appears that both production employees and installation employees respond to service calls that can be handled over the telephone, there is no evidence that employees from each group regularly collaborate with one another in responding to such calls. Finally, I note that none of the current seven installers has previously worked in the production or maintenance area, although three of the production employees were once on the road crew. Accordingly, because of the separate supervision, the differences in hours of work, the lack of evidence of regular interchange, and the amount of time installers are

away from the Employer's facility, I find that the evidence is insufficient to require that the installation employees be included in the petitioned-for unit of production and maintenance employees. Overnite Transportation Co., 322 NLRB 347 (1996); Michael Reese Hospital and Medical Center, 242 NLRB 322 (1979); McCann Steel Company, Inc., 179 NLRB 635 (1969).⁶

With regard to Merle Ridder, the Employer correctly points out in its post-hearing brief that the party claiming supervisory status bears the burden of proof. The Employer also contends that the Union has failed to establish Ridder's supervisory status, particularly because Hughson was not qualified to testify as he has no direct knowledge of Ridder's authority. While it is true that Hughson is not Ridder's direct supervisor, it is also the case that Hughson does not supervise the production area. Yet Hughson testified at the hearing extensively with regard to both Ridder and the production employees. For example, Hughson identified Ridder as a member of the management team and testified that Ridder reports directly to the plant manager. Furthermore, the Employer witness estimated that the plant manager spends only 15 percent of his time

⁶ The Employer cites three cases in its post-hearing brief for the proposition that "The Board has long held that outside installation employees are to be included in a single appropriate unit with production employees." In one of the cases, San Antonio Machine & Supply Co., 85 NLRB 143 (1949), the Board emphasized that it will look not at the locations of the work, but at the conditions of employment, and found that the installation employees should be in the production unit because they spent 20 percent of their time in the shop, and when they did, they had the same supervisor as production employees. That is a key distinction from this case, where it is clear that while the road crew spends 10 percent of its time at the Employer's facility, most of it is spent in shipping and receiving under the supervision of Hughson and Blasberg, who supervise only installation employees. In the second case, The North Electric Manufacturing Co., 89 NLRB 260 (1950), the Board included installers in the production unit because of evidence that the installers spent 15 to 25 percent of their time in the inspection area; that they were under the same supervision as other employees in the inspection area; and that production employees regularly accompanied the installers on the road. In the instant case, there is no evidence that production employees regularly accompany installers on the road, and, as noted, installers remain under Hughson's supervision when working in the Employer's facility. The third case cited by the Employer, Interstate Supply Company, 117 NLRB 1062 (1957), does not address the issue of inclusion of installers in a production unit.

on the production floor. It is also clear that Ridder assigns work to and monitors the quality of work performed by assemblers. He also attends weekly meetings held for supervisors/managers. On the other hand, the record is silent as to Ridder's rate of pay, method of pay, use of independent judgment in assigning work, and as to how the plant manager effectively evaluates and/or disciplines assemblers without significant input from Ridder if the plant manager is in the production area (which includes areas other than assembly) only 15 percent of the time. Therefore, I conclude that the record is insufficient to establish whether Ridder is a supervisor, but decline to find that the Union has failed to meet its burden of proof, in view of Hughson's testimony. Accordingly, I will permit him to vote a challenged ballot.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including shipping and warehouse employees, employed by the Employer at its 209 North Roosevelt Street, Cedar Falls, Iowa facility; excluding installation employees, office clerical employees, managers, guards and supervisors as defined in the Act, as amended.

DIRECTION OF ELECTION⁷

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

⁷ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **June 11, 1999**.

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁸

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Union Local 650, affiliated with the International Brotherhood of Teamsters.

⁸ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 110 South Fourth Street, Suite 234, Minneapolis, MN 55401, on or before **June 4, 1999**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Signed at Minneapolis, Minnesota, this 28th day of May, 1999.

/s/ Marlin O. Osthus

Marlin O. Osthus, Acting Regional Director
Eighteenth Region
National Labor Relations Board

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